IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 9865 OF 2004

Proposed Vinayak Co-op. Hsg. Soc.
Solapur. ... Petitioner

Vs.

Abdul Gani Emamsaheb Farash Respondent

Mr. G.S. Godbole for Petitioner.

Mr. Pankaj J. Das for Respondent No. 4.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 11, 2005

P.C.

. It is not necessary to go into the issue as to whether the learned Judge was right in proceeding to hear the issue as framed on 12.10.2004 as to maintainability of the suit. It will be open to the Petitioners herein to point out to the learned Judge that if the issue arises as to jurisdiction, it can only be the matter touching pecuniary, territorial or subject matters or ouster of jurisdiction by special enactments. The other case would be under Order 8 Rule 7 where there be no cause of action. In the instant case the issue seems to be as to non-joinder of necessary party. On behalf of the Petitioner, learned counsel has pointed out that the said issue could not have been framed as a preliminary issue as the petitioners

herein have also applied for addition of parties as Plaintiff in the representative capacity and which application has not been decided. Considering above, it will be appropriate that both the applications including application for suing in representative capacity be heard and disposed of along with the issue of maintainability of the suit and after considering the contentions advanced by both the parties. With above observations, petition disposed of. No order as to costs.

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(F.I. REBELLO,J.)